

An Overview of the Victim Witness Assistance Program for the U.S. Attorney's Office in the Northern District of Georgia

INTRODUCTION

If you are a victim of or a witness to a crime, the Victim-Witness Assistance Program is designed to provide you with services while you are involved in the criminal justice system.

As a victim of a crime, you may be experiencing feelings of confusion, frustration, fear, and anger. Our staff can help you deal with these feelings. We also will explain your rights as a victim or witness, and help you better understand how the criminal justice system works.

One of the responsibilities of citizenship for those who have knowledge about the commission of a crime is to serve as witnesses at the criminal trial or hearings held in connection with the criminal prosecution. The federal criminal justice system cannot function without the participation of witnesses. The complete cooperation and truthful testimony of all witnesses are essential to the proper determination of guilt or innocence in a criminal case.

Our office is concerned that victims and witnesses of crime are treated fairly throughout their contact with the criminal justice system.

The United States Department of Justice and the United States Attorney's office in this district have taken several steps to make the participation by victims of crime and witnesses more effective and meaningful. We hope that this information will provide the answers to many of your questions and give you sufficient general information to understand your rights and responsibilities.

Thank you for your cooperation with our office and for your service as a witness. We appreciate the sacrifice of time that being a witness requires.

PART I: GENERAL INFORMATION FOR VICTIMS AND WITNESSES

The United States Attorney is the chief prosecutor of crimes against the laws of the United States. There is a United States Attorney's office for each federal judicial district. You are either a victim of a crime or are being asked to serve as a witness for the United States in a particular case.

This information is provided to help you understand the federal criminal justice system.

U.S. Department of Justice
Federal Victim/Witness Program

The goal of the Federal Victim/Witness Program is to insure that victims of federal crime are treated with fairness and respect for the victim's dignity and privacy. This program carries out the mandates of the Federal Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victims Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victims Rights Clarification Act of 1997. These victim/witness assistance and protection laws apply to all witnesses and to victims who have suffered physical, financial, or emotional trauma as the result of a federal crime. A variety of notification and assistance services are provided to victims and witnesses of federal crime by Assistant United States Attorneys and other U.S. Attorney's Office staff, with the assistance of federal and tribal law enforcement agencies.

The criminal justice process can be complex and lengthy. During the process, you will be kept informed of the status of your case by a Victim-Witness Coordinator. This Coordinator will be your principal contact throughout the process. Contact the Coordinator as soon as possible if you have any questions.

NOTIFICATION SERVICES

If you request it, we will provide the following notifications to you:

- When there has been a change in the detention status of an offender;
- When charges have been filed against a suspected offender, or if any or all charges are dismissed;
- When court schedules are changed;
- When there has been a plea agreement and the terms of the agreement;
- If the defendant either pleads guilty or is found guilty, you have the right to submit an "impact statement" detailing the emotional effects of this crime on your life and the lives of members of your family;
- The date set for sentencing if the offender is found guilty; and the sentence imposed;
- If there is a conviction, you may be notified of changes in the prisoner's status by the Bureau of Prisons.

OTHER ASSISTANCE SERVICES

- To the extent possible, a separate waiting area will be provided for you apart from the offender and defense witnesses during court proceedings.
- At your request, emotional support and assistance will be provided to you during court appearances.
- Upon your request, we will assist you by speaking with your employer if your cooperation in the investigation or prosecution of the crime causes you to be absent from work. Likewise, if the crime prohibits your ability to make timely payments to creditors, assistance will be provided to you in dealing with those creditors.
- You will be provided with information or assistance concerning transportation, parking, lodging, translator and related services.
- When needed, you will be provided referrals to existing agencies for shelter, counseling, compensation, and other types of assistance services.

As a witness for the United States:

1. YOU ARE ENTITLED TO UNDERSTAND WHAT IS HAPPENING IN THE CASE IN WHICH YOU ARE INVOLVED

If you have questions about the case in which you are involved, you should feel free to call the Assistant United States Attorney who is handling the case. Also, the Assistant United States Attorney may be contacting you throughout the case regarding various stages of the proceeding.

2. YOU ARE ENTITLED TO A WITNESS FEE FOR EVERY DAY THAT YOU APPEAR IN COURT IN CONNECTION WITH THE CASE

If you are not a federal government employee, you will receive a witness fee for each day that you are required to attend court in connection with the case, including time spent waiting to testify. Out-of-town witnesses receive reimbursement for certain travel expenses in addition to their daily witness fee.

At the conclusion of your testimony, you will be assisted in completing a witness voucher to make a claim for your fees. Generally, a check for all fees will be provided to you when the case is over.

If you are a federal government employee, the United States Attorney's office will submit a "Certificate of Attendance" that will enable you to receive your regular salary, notwithstanding your absence from your job. You will not collect a witness fee in addition to that salary.

3. YOU HAVE THE RIGHT TO BE FREE FROM ANY THREATS

If anyone threatens you, or you feel that you are being harassed because of your contribution to the case being tried, you should immediately notify the United States Attorney's office, the Federal Bureau of Investigation (FBI), or the federal agency conducting the investigation of the case in which you are involved. All of these telephone numbers are listed in your telephone directory under United States Government. Victims and witnesses have the right to be free of harassment or intimidation by the defendant or others, and it is a federal offense to threaten, intimidate, harass, or mislead a witness in a criminal proceeding.

The court may release the defendant while (s)he is awaiting trial under conditions that satisfy the court that the defendant will appear in court for all hearings and for trial. The court may require the defendant to post a money or property bond, or it may simply require the defendant to promise to appear. Since many federal criminal defendants are released on bond pending trial, you should not be surprised if you happen to see the defendant on release prior to trial. Nevertheless, if you have any concerns about the conditions of the defendant's release, please discuss them with the Assistant United States Attorney handling the case.

Of course, if you are threatened or harassed while you are attending court proceedings, you should report that fact immediately to the Assistant United States Attorney.

4. DISCUSSING THE CASE WITH OTHERS

United States Attorneys' offices often receive calls from witnesses asking about their rights if a defense attorney or a defense investigator contacts them. Witnesses do not belong to either side of a criminal case. Thus, even though you may first be subpoenaed by the prosecution or by the defense, it is proper for the other side to try to talk to you. While it is the prosecution that is asking for your cooperation in this case, you may be contacted by the defense lawyer or an investigator for the defendant for an interview. While you may discuss the case with them if you wish to do so, you also have the right not to talk to them. The choice is entirely yours. If you do agree to an interview with a representative of the government or defense, here are some suggestions on how to deal with it:

First and foremost, you should always tell "the truth, the whole truth, and nothing but the truth."

If you give a statement to a lawyer or an investigator for the government or the defense, you do not have to sign the statement. However, any statement that you make during an interview, even if not signed, may be used to try to challenge or discredit your testimony in court if your testimony differs from that statement. This applies even to oral statements that are not reduced to writing at all.

If you decide to sign a statement, make sure you read it over very carefully beforehand and correct any mistakes.

Ask to have a copy of any statement that you make. Whether you sign the statement or not, you may tell the lawyer or investigator that you will refuse to give a statement unless you receive a copy of it.

When you have an interview with the defendant's lawyer or investigator, please let the United States Attorney's office know about the interview. If you elect to have an interview with the defendant's lawyer or investigator, you may want to have present an additional person chosen by you to witness the interview.

You may discuss the case with anyone you wish. The choice is yours. Be sure you know to whom you are talking when you discuss the case. We encourage you not to discuss the case with members of the press, since you are a potential witness in a criminal case and the rights of the government and the defendant to a fair trial could be jeopardized by pre-trial publicity.

After a witness has testified in court, (s)he may not tell other witnesses what was said during the testimony until after the case is over. Thus, do not ask other witnesses about their testimony and do not volunteer information about your own.

The Assistant United States Attorney may discuss various aspects of the case with you to inform you and to prepare you for testimony if that is necessary. However, the Federal Rules for Criminal Procedure prevent an Assistant United States Attorney from disclosing to anyone, with limited exceptions, what has occurred in the grand jury. The purpose of this secrecy rule is to protect grand jurors and persons involved in the investigation and to make sure that no one tampers with the investigation or flees from the jurisdiction. For those reasons, an Assistant United States Attorney may be prevented from fully answering some of your questions about the results of the investigation or the decision of whether to file criminal charges.

5. SCHEDULING YOUR APPEARANCE IN COURT

There are several kinds of court hearings in a case in which you might be asked to testify. These include a preliminary hearing, a grand jury appearance, a motion hearing, and an appearance in court for trial or sentencing. It is difficult to schedule court hearings at a time convenient for everyone involved. Any court hearing requires the presence of witnesses, law enforcement officers, the defendant's lawyer, an Assistant United States Attorney, and the judge, as well as the defendant.

Therefore, WHEN THE COURT SETS A TIME AND PLACE FOR A HEARING IN THE CASE YOU ARE INVOLVED IN, YOU MUST BE THERE PROMPTLY, unless an emergency prevents it. And if you have been sent a subpoena--a formal order to appear--you should know that there are serious penalties for those who do not obey that order.

If you know, in advance, anything that might keep you from making a court appearance, let the United States Attorney's office know immediately so that an attempt may be made to adjust the schedule. However, scheduling is at the discretion of the court.

Despite the best efforts of everyone concerned, court hearings do not always take place on schedule--the hearing or trial is sometimes postponed or continued to a new date. When possible, the Assistant United States Attorney handling the case in which you are involved will discuss with you any proposed scheduling change. Also, the United States Attorney's office will notify you of any postponements in advance of your appearance at court.

6. PLANNING YOUR TRIP TO COURT

As a victim or witness, you may have questions about transportation, the location of the courthouse, food service, or where to go and what time is your appearance in court. The United States Attorney's office has assembled information on these subjects. You should feel free to ask either the case agent, the Assistant United States Attorney, or the Victim-Witness Coordinator about them.

7. HOW CASES TURN OUT

Many criminal cases are concluded without a trial being held. In many cases, the evidence of the defendant's guilt is so strong that (s)he pleads guilty to the crime. Guilty pleas and other ways the case may end without a trial are discussed below:

Guilty Plea

The defendant may choose to plead guilty. By pleading guilty, the defendant waives his or her right to a trial. Generally, the guilty plea constitutes a conviction.

Plea Agreement

The Assistant United States Attorney may enter into an agreement with the defendant whereby if the defendant pleads guilty to certain charges, the government will ask the court to dismiss other charges, or will take another position with respect to the sentence imposed or some other action. Sometimes, the defendant will agree to plead guilty to one or more of the charges or to a less serious or related offense. This process of obtaining a defendant's agreement to plead is recognized by the courts as a proper way of disposing of criminal cases. In fact, the United States Supreme Court held that agreed-upon pleas are to be encouraged. The government usually benefits in several ways by entering into an agreement for a guilty plea to certain charges rather than going to trial against a defendant on all charges. One benefit is the guarantee of a conviction. Criminal cases always involve risks and uncertainties. Even a case that appears to be very strong may not result in a conviction if there is a trial. And in many cases, there is a possibility that certain evidence may not be admitted. The Assistant United States Attorney will consider this in deciding to agree to a plea to certain charges. Another benefit of plea agreements is the prompt and certain imposition of a sentence, which is a major goal of the criminal justice system. A third benefit is that a plea agreement by one defendant may help to obtain pleas and convictions of other defendants. Often, the Assistant United States Attorney will require, as a condition of a plea, cooperation of the defendant in further investigations or prosecutions of others. Also, since there is no trial and no witnesses are called to testify, the identity of informants and witnesses can remain undisclosed. This preserves an informant's usefulness in other investigations, and prevents inconvenience and emotional stress that witnesses might experience when they have to testify.

In deciding to accept certain pleas, the Assistant United States Attorney considers the effect of the criminal offense on the victims, the criminal history of the defendant, the seriousness of the offense, and the interest of society in seeing all crimes punished with certainty. The Assistant United States Attorney will also consider whether the proposed plea will expose the defendant to a maximum punishment that is appropriate even though the defendant may not plead guilty to all charges.

Declination and Dismissal

A case referred to the United States Attorney may not be acted upon, which is called a declination, or may be dismissed after it has been filed with the court. There are several reasons why cases may be declined or dismissed.

An Assistant United States Attorney has discretion to decline to prosecute a case based on several considerations. The Assistant United States Attorney must decline if the evidence is too weak. The Assistant United States Attorney is ethically bound not to bring criminal charges unless the admissible evidence will probably be sufficient to obtain a conviction. However, even when the evidence is sufficient, the Assistant United States Attorney may consider that there is not a sufficient federal interest served by prosecution, but that the defendant is subject to prosecution in another state or local court (including a state court for the prosecution of juvenile delinquents).

A dismissal may occur when the Assistant United States Attorney asks the court to do so. The Assistant United States Attorney may do so because the court has excluded critical evidence or witnesses have become unavailable. In other situations, evidence which weakens the case may come to light after the case has started. The court may dismiss a case over the objection of the Assistant United States Attorney when it determines that the evidence is insufficient to find the defendant guilty.

Pre-Trial Diversion

In selected cases, an Assistant United States Attorney may decide not to bring charges against a defendant or go to trial immediately. Instead, the defendant is placed in a Pre-Trial Diversion Program. Under this program, the United States and the defendant enter into a contract in which the defendant agrees to comply with certain conditions and to be supervised by the United States Probation Office for a period of time, usually one year. One of the conditions may be to make restitution to the victims of a crime. If the defendant successfully complies with all of the conditions, no charges will be brought. If, however, the defendant fails to meet a condition, charges may be filed.

The Pre-Trial Diversion Program is designed for those defendants who do not appear likely to engage in further criminal conduct and who appear to be susceptible to rehabilitation. Overall, the objectives of the program are to prevent future criminal activity by certain defendants who would benefit by diversion from traditional punishment into community supervision and services. The program also helps to make criminal sanctions more appropriate to the individual offenders, and it saves judicial and prosecutive resources for concentration on major crimes.

Several factors may be considered in deciding upon diversions, including the criminal record of the defendant, the willingness of the defendant to make restitution, and the likelihood that the defendant may engage in further criminal conduct. Additionally, before a defendant may enter into a diversion program, the United States Probation Office must agree to supervise the defendant, and the defendant usually must admit that he or she committed the wrongdoing.

8. WHAT IF YOUR PROPERTY IS BEING HELD AS EVIDENCE?

Sometimes law enforcement officers take and store property belonging to witnesses as evidence in a trial. This might be property that was taken by law enforcement officers at the crime scene or that was stolen.

If your property is being held as evidence by law enforcement officers and you would like to regain your property before the case is over, you should notify the law enforcement officer or Assistant United States Attorney who is handling the case in which you are involved. Occasionally, arrangements can be made for early release of property. In any event, at the conclusion of the case you should be able to have your property returned to you promptly. The prompt return of your property will always be sought. In those instances where this cannot be achieved, the Assistant United States Attorney will explain the reasons for retaining the property.

9. RECOVERING FINANCIAL LOSSES

Often, crime means a financial loss for the victim. Perhaps you have had cash or valuable property stolen (and not recovered), have experienced damaged property, medical expenses, or a loss of income because you could not work, or the nature of the crime may be that you have been defrauded of money belonging to you. If any of these things have happened to you, please check to see if you have insurance which will cover the loss.

If you have no insurance or only partial coverage, there are three possible ways of trying to recover your losses. Unfortunately these three ways, discussed below, are not always effective in many cases.

Compensation

Crime victims' compensation programs, administered by the states, provide financial assistance to victims and survivors of victims of criminal violence. Payments are made for medical expenses, including expenses for mental health counseling and care; loss of wages attributable to a physical injury; and funeral expenses attributable to a death resulting from a compensable crime. Other compensable expenses may include eyeglasses or other corrective lenses, dental services and devices, and prosthetic devices. Each state establishes its own instructions for applying for crime victims' compensation, procedures to be used in processing applications, approval authority, and dollar limits for awards to victims.

Restitution

Definition: Payment to a crime victim by a criminal defendant for financial losses or personal injuries caused by the crime.

In many types of federal crimes, it is mandatory that the judge order a defendant to pay restitution for cases occurring after April 24, 1996. For most crimes committed prior to this date, Judges have more discretion on whether to order restitution. Unfortunately, as a practical matter, a defendant who has no money or

potential to make money may be unlikely to ever make meaningful restitution to the victims of crime.

If a defendant pleads guilty or is found guilty at trial, the Judge may order reimbursement to a victim for certain losses. Payments are usually made to the Clerk of the Court, who sends the money on to the victim. It is important for you to advise the Clerk of the Court if you move so they can forward the money to you at the proper address. The mailing address is: Clerk of the Court, 75 Spring Street, S.W., 22nd Floor, Atlanta, GA 30303, Att: Financial Section.

The U.S. Attorney's Office Financial Litigation Unit (FLU) ([hyperlink](#)) is responsible for collecting the money from the defendant. If you have information which will help collect money from the defendant you should contact the FLU Unit at (404)581-6350, located at 75 Spring Street, S.W., 4th Floor, Atlanta, GA 30303.

You should cooperate fully with the United States Attorney's office and the United States Probation office by giving them information regarding the impact that the crime had on you, as the victim. Without this information, the judge cannot make an informed decision on your need for restitution.

Civil Damages

A victim may try to recover his or her losses by a civil lawsuit against the defendant. Such a private lawsuit is completely separate from the criminal case. In fact, the jury in a civil case may find that the defendant owes the victim money, even though a different jury in the criminal case may find the defendant not guilty because the burden of proof is higher in a criminal case.

The difficulty in trying to obtain civil damages from the defendant is the same as in trying to get restitution; whatever money the defendant once had may now be gone. You may need a lawyer to bring such a suit. If you qualify, you may be able to get help free of charge from Legal Aid Services. On the other hand, if your total losses are small, then you may not need a lawyer at all. You may be able to bring your own lawsuit without the assistance of a lawyer.

PART II: WHAT HAPPENS IN A FELONY CASE?

Any offense punishable by death or imprisonment exceeding one year is called a felony. Felonies are the most serious crimes. The prosecutors and the courts handle felony cases differently from misdemeanor cases (cases that have shorter possible sentences).

A felony case moves through the court system in the steps explained in the sections below. Each step is explained in the sections below. **WITNESSES ARE NOT NEEDED AT EVERY STEP IN THE PROCESS.** Most witnesses are asked to come to court only for a preliminary hearing, a grand jury hearing, a witness conference, or a trial.

Not every step is taken in every case. In fact, many cases end before they reach trial. Even so, you may wish to know all the steps that the case in which you are involved might go through.

1. INITIATING CHARGES BY COMPLAINTS

Some felony cases begin when the United States Attorney (or usually an Assistant United States Attorney), working with a law enforcement officer, files a criminal complaint before a United States Magistrate Judge. This complaint is a statement, under oath, of facts sufficient to support probable cause to believe that an offense against the laws of the United States has been committed by a defendant. If the Magistrate Judge accepts the complaint, a summons or arrest warrant will be issued for the defendant. In some cases, the defendant may have been arrested without a warrant, in which case the defendant is presented to the Magistrate Judge at the time the complaint is filed.

Victims and witnesses of federal offenses may be interviewed by a law enforcement officer prior to the filing of a complaint. In those situations, the law enforcement officer will report the statements of the victim or witness to the Assistant United States Attorney assigned to the case. Sometimes the Assistant United States Attorney may wish to interview the witness in person.

2. THE INITIAL APPEARANCE

This is the defendant's first hearing after arrest. It takes place before a United States Magistrate Judge, usually the same day the defendant is arrested. Witnesses are not needed for testimony at this hearing. The hearing has three purposes. First, the defendant is told his or her rights and the charges are explained. Second, the defendant is assisted in making arrangements for legal representation, by appointment of an attorney by the court, if necessary. Third, the court determines if the defendant can be safely released on bail.

Many defendants charged with a felony are released at the end of this hearing -- either they have posted money to guarantee their return for trial and other hearings, or they have been released on conditions which include their promise to return for future hearings or the trial. Those conditions may include the requirement that they not personally contact witnesses in the case. In some cases, the defendant will be detained without bail.

3. PRELIMINARY HEARING

The purpose of this hearing is to determine whether there is evidence to find probable cause to believe that the defendant has committed the offense charged. The burden is on the United States Attorney to produce sufficient evidence to support this finding. The United States Attorney does not have to prove at this hearing that the defendant is guilty, but must present evidence to show that there is good reason to proceed with the charges against the defendant. The date for this hearing will be set at the initial appearance.

Usually the law enforcement officer alone can give sufficient evidence that there is probable cause that the defendant has committed the offense. Occasionally, witnesses may be subpoenaed to testify; if you receive such a subpoena, you should get in touch with the Assistant United States Attorney who is handling the case as soon as possible.

4. GRAND JURY HEARINGS

A grand jury is a group of twenty-three (23) citizens from the same judicial district who meet to examine the evidence against people who may be charged with a crime. The work is done in complete secrecy. Only an Assistant United States Attorney and a stenographer meet with them -- plus those witnesses who are subpoenaed to give evidence before the grand jury.

Although a grand jury is not a trial, it is a serious matter. Witnesses are put under oath. Their testimony is recorded and may later be used during the trial. It is important to review carefully what you remember about the crime before you testify before the grand jury. You must tell the truth. Before testifying before the grand jury, you probably will meet with the case agent or the Assistant United States Attorney. This will help you get ready for your grand jury appearance.

After hearing the evidence presented by the Assistant United States Attorney, the grand jury will decide whether the case should be prosecuted. Grand jury charges against a defendant are called "indictments." If the grand jury finds that the case should not be prosecuted, they will return a "no true bill."

Not every witness in a serious crime is called to testify by the grand jury. Sometimes the grand jury will issue indictments on the basis of an officer's testimony alone. If you are called to testify, the Assistant United States Attorney should be able to give you an approximate time when your testimony will be heard.

Unfortunately, it is not always possible to schedule testimony to the minute. Your appearance may involve some waiting to be called before the grand jury itself, so we recommend that you bring some reading material along with you.

All witnesses who testify before the grand jury, except federal employees, are entitled to the same witness fee and expenses which are available for testifying in court at trial.

5. ARRAIGNMENT ON THE INDICTMENT

In this hearing, the charges in an indictment are read to the defendant and his or her bail conditions are reviewed. Witnesses are usually not needed at this hearing. The date for the case to be heard at trial is usually set at the time of the arraignment.

6. HEARINGS ON MOTIONS

Before the trial, the court may hear "motions" made by the defendant or the United States. These may include motions to suppress evidence, to compel discovery, or to resolve other legal questions. In most cases, witnesses are not needed at the motions hearing. If a witness is needed at this hearing, (s)he will receive a notice from the United States Attorney's office.

7. THE WITNESS CONFERENCE

At some time before the trial date, the Assistant United States Attorney in charge of the case may contact you by letter or phone asking you to appear at a witness conference to prepare you for trial. The purpose of this witness conference is to review the evidence you will be testifying about with the Assistant United States Attorney who will be trying the case. You are entitled to a witness fee for attending this conference.

8. TRIAL

In many felony cases, the only contact witnesses have with the prosecutors comes at the witness conference and at the trial. Normally, when the trial date has been set, you will be notified by a subpoena -- a formal written order from the court to appear.

You should be aware that a subpoena is an order of the court, and you may face serious penalties for failing to appear as directed on that subpoena. Check your subpoena for the exact time at which you should appear. If for any reason you are unable to appear as the subpoena directs, you should immediately notify the Assistant United States Attorney who is working on the case.

Usually felony trials go on as scheduled; however, this is not always the case. Sometimes the defendant may plead guilty at the last minute, and the trial is therefore canceled. At other times, the defendant asks for and is granted a continuance. Sometimes the trial has to be postponed a day or more because earlier cases being heard by the court have taken longer than expected. When possible, the Assistant United States Attorney handling the case or the Victim-Witness Coordinator will discuss with you any proposed scheduling change. Also, the United States Attorney's office will do everything it can to notify you of any postponement in advance of your appearance at court.

Although all of the witnesses for trial are required to appear early in the day, most must wait for some period of time to be called to the courtroom to give their testimony. For this reason, it is a good idea to bring some reading material or handwork to occupy your waiting time.

A felony trial follows the same pattern as the trial of any other criminal case before the court. The prosecution and the defense have an opportunity to make an opening statement, then the Assistant United States Attorney will present the case for the United States. Each witness that is called for the United States may be cross-examined by the defendant or the defendant's counsel. When the prosecution has rested its case, the defense then has an opportunity to present its side of the case. The United States may then cross-examine the defendant's witnesses. When both sides have rested, the prosecution and the defense have an opportunity to argue the merits of the case to the court or, in a case which is being heard by a jury, to the jury, in what is called a "closing argument."

The court or the jury will then make its findings and deliver a verdict of guilty or not guilty of the offense charged.

After you have testified in court, you should not tell other witnesses what was said during the testimony until after the case is over. Thus, you should not ask other witnesses about their testimony, and you should not volunteer information about your own.

9. SENTENCING

In a criminal case, if the defendant is convicted, the judge will set a date for sentencing. The time between conviction and sentencing is most often used in the preparation of a pre-sentence investigation report. This report is prepared by the United States Probation Office. At the time of sentencing, the judge will consider both favorable and unfavorable facts about the defendant before determining the appropriate sentence to impose.

The function of imposing sentence in all cases except death penalty cases is exclusively that of the judge. In some cases, (s)he has a wide range of alternatives to consider and may place the defendant on probation (in which the defendant is released in the community under supervision of the court for a period of years), or place the defendant in jail for a specific period of time, or impose a fine, or formulate a sentence involving a combination of these sanctions.

The court will also consider requiring the defendant to make restitution to victims who have suffered physical or financial damage as a result of the crime. If you are a victim, you should cooperate fully with the United States Attorney's office and the United States Probation office on preparing a Victim Impact Statement regarding the impact of the crime and the need for restitution. A Victim Impact Statement is a written description of your physical, psychological, emotional, and financial injuries that occurred as a direct result of the crime. A Victim Impact Statement is read by the judge who will be sentencing the defendant.

Victims and witnesses may attend the sentencing proceedings and some victims may also have the opportunity to address the court at this time. The Assistant United States Attorney will tell you if such an opportunity exists for you and will talk to you about such a presentation.

PART III: WHAT HAPPENS IN A MISDEMEANOR CASE?

Any criminal offense punishable by imprisonment for a term not exceeding one year is a misdemeanor. Any misdemeanor that carries a penalty of imprisonment for not more than six months, a fine of not more than five hundred dollars (\$500), or both, is a petty offense.

Misdemeanors include such offenses as minor assaults, simple possession of controlled substances, some tax law violations, and other offenses. Petty offenses include offenses against traffic laws as well as many regulations enacted by the agencies of the United States.

1. CRIMINAL INFORMATIONS OR COMPLAINTS

A misdemeanor case is initiated by the United States Attorney filing a criminal information or a complaint with the court charging a misdemeanor. This is usually done after review of the evidence by an Assistant United States Attorney with a law enforcement officer's assistance. It is the United States Attorney's task to decide whether a case will be brought, and how that case will be charged. That review may involve the Assistant United States Attorney speaking to witnesses and victims, or it may be that the law enforcement officer will report the statements of victims and witnesses to the United States Attorney.

Once the complaint or information is filed, a date is set for the defendant to appear before the United States Magistrate Judge for arraignment. In cases where an arrest has been made prior to the filing of a complaint or information, the arraignment takes place immediately.

2. ARRAIGNMENT

The arraignment before the United States Magistrate Judge is a hearing during which the defendant is

advised of his or her rights against self-incrimination and to the assistance of counsel, of his or her right to have the case heard before a United States District Court Judge or before a United States Magistrate Judge, and of the dates for further proceedings in the case.

The Magistrate Judge will review facts presented by the United States Attorney and by the defendant and set conditions of bail release. Those conditions may include a promise to appear on the date set for trial of the case, and/or the posting of a money bond to be forfeited if the defendant fails to appear, or other such conditions of release as seem fair and just to the Magistrate Judge. The purpose of bond is to insure that the defendant will be present when the case is heard for final disposition. It is not necessary for victims or witnesses to appear at this arraignment, unless they have been specifically instructed to do so by the case agent or the Assistant United States Attorney. In any event, you will be advised of any pre-trial release of the defendant.

3. PETTY OFFENSES

Petty offenses are most often initiated by the issuance of a traffic violation notice (TVN). A TVN is issued to defendants by the law enforcement officer at the time of the offense. They command the defendant either to pay a collateral fine to dispose of the matter or to appear before the United States Magistrate Judge on the date written on the ticket. Most often the case will be heard for trial before the United States Magistrate Judge on that date, if the collateral is not paid. If you are a victim or a witness in one of these petty offense cases, the United States Attorney's office may request that you attend a witness conference prior to trial.

4. TRIAL

A trial of a misdemeanor case follows the same pattern as the trial of any other criminal case before the court. The prosecution and the defense have an opportunity to make an opening statement, then the Assistant United States Attorney will present the case for the United States. Each witness called for the United States may be cross-examined by the defendant or the defendant's counsel. When the prosecution has rested its case, the defense then has an opportunity to present its side of the case. The United States may then cross-examine the defendant's witnesses. When both sides have rested, the prosecution and the defense have an opportunity to argue the merits of the case to the court or, in a case which is being heard by a jury, to the jury in what is called a "closing argument." (Some serious misdemeanor cases are heard with a jury, either before the Magistrate Judge or before the United States District Court Judge.)

The court or the jury will then make its findings and deliver a verdict of guilty or not guilty of the offense charged.

5. SENTENCING

In petty offense cases, the court may proceed immediately after the verdict to sentencing. The defendant and the United States each has an opportunity to speak to the issue of sentencing. In misdemeanor cases, the court may request a pre-sentence investigation and report from the United States Probation office. If such a report is ordered, sentencing will be suspended for a period of time to permit the report to be prepared. If the case before the court involves financial or physical injury to a victim of the crime, the court must consider restitution (repayment of damages to the victim as part of the sentence imposed).

A Victim Impact Statement, prepared by the victim, can be used to establish this element of damage. In cases in which damage has been suffered as a result of a misdemeanor offense, the victim should bring that damage to the attention of the Assistant United States Attorney handling the case, to insure that the damage is set before the court. The victim should cooperate fully with the Assistant United States Attorney and the United States Probation officer to determine the extent of the impact of the crime.

The function of imposing sentence is exclusively that of the judge, who has a wide range of alternatives to consider and, depending upon the case, may place the defendant on probation (in which the defendant is released into the community under the supervision of the court for a period of time), or place the defendant in jail for a specific period of time, or impose a fine. Victims and witnesses may attend the sentencing

proceedings and some victims may have the opportunity to address the court at this time. The Assistant United States Attorney handling the case will tell you if such an opportunity exists for you and will talk to you about such a presentation.

PART IV: CONCLUSION

We hope that this information has answered many of your questions as to how the federal criminal justice system operates and what is expected of you in your role as a potential witness. Witnesses have important responsibilities in this process, and their full cooperation is essential if the system is to operate effectively. Your contribution, in time and energy, is very much appreciated by everyone in the United States Attorney's office.

If you have any other questions or problems related to the case, please contact the Victim-Witness Coordinator or the Assistant United States Attorney assigned to the case.

If you have any questions or problems, please contact the Victim-Witness Staff:

Jan Jones
Victim-Witness Specialist
Telephone: (404)581-6102

Beth Manning Dozier
Victim-Witness Assistant
Telephone: (404)581-6041

Toll Free: 1-888-431-1918
Switchboard: (404) 581-6000